Glenn Saums

From: Glenn Saums [glenn_saums@nmenv.state.nm.us]
Sent: Monday, January 12, 2004 10:57 AM
To: Russell Nelson
Subject: RE: Draft comments on antidegradation implementation

Russell,
This e-mail is to acknowledge receipt of your e-mailed draft comments on January 12, 2004.
Glenn Saums

-----Original Message-----
From: Russell Nelson [mailto:jrnelson@sbcglobal.net]
Sent: Monday, January 12, 2004 8:35 AM
To: glenn_saums@nmenv.state.nm.us
Subject: Draft comments on antidegradation implementation

Hi Glenn,

I'm not in the office today, but I finished this up last night from home and wanted to get it to you prior to the comment period close. I have provided copies to the folks in our office to finalize and get signed - Section Chief or Diane, depending on who's available. So you should get a hard copy today.

In the meantime, the draft(s) are attached.

By the way, you guys did a good job on this.

Russell Nelson

January 12, 2004

Glenn Saums
Point Source Regulation Section Program Manager
Surface Water Quality Bureau
New Mexico Environment Department
Box 26110
Santa Fe, NM 87502.

Dear Mr. Saums:

I appreciate your efforts commitment to the development of Antidegradation Implementation Procedures intended to implement the Antidegradation Policy in *Standards for Interstate and Intrastate Surface Waters*, 20.6.4.8 NMAC. The proposed implementation procedures are a solid basis for New Mexico to build on as the Surface Water Quality Bureau and Environment Department as a whole, gain experience in carrying out antidegradation reviews. What follows are some general comments and more specific comments on the proposed procedures in the order that the they are found in the document are enclosed.

As you know, each State must develop, adopt, and retain a statewide antidegradation policy regarding water quality standards and establish procedures for its implementation through the water quality management process. State and Tribal antidegradation policies and implementation procedures must be consistent with the components detailed in 40 CFR 131.12. States may adopt antidegradation statements more protective than the Federal requirement. Antidegradation implementation procedures must specify how the State will determine, on a case-by- case basis, whether, and to what extent, water quality may be lowered.

Any one or a combination of several activities may trigger an antidegradation analysis. Antidegradation review requirements are triggered by any action that would result in the lowering of water quality in a high-quality water. Such activities as a water quality standards review, the establishment of new or revised wasteload allocations, issuance or reissuance of NPDES permits, certification of Army Corps of Engineers (CoE) section 404 permits, demonstration of need for advanced treatment, or a request by a private or public agency or

an individual for a special study of the water body. Lowering water quality in a high quality water would not be permissible unless the State conducts a review consistent with its policy and implementation. In addition, no permit may be issued to a discharger to high-quality waters with effluent limits greater than actual current loadings if such loadings will cause a lowering of water quality without an antidegradation review.

Clearly, the national antidegradation policy establishes explicit procedures by which a State or Tribe may determine that water quality that exceeds that necessary to support the Section 101(a)(2) goal of the Act may be lowered (Section 131.12(a)(2)). However, EPA Region 6 recognizes that although the clear requirement exits, guidance to States and Tribes on developing specific implementation is limited. As a result, the most comprehensive discussion and guidance for State's and Tribes is found in *EPA's Water Quality Standards Handbook, 2nd Edition* (1994). I would encourage the Bureau to rely on the *Handbook* for direction in the interim.

Following final adoption and submission of the revised CPP containing these proposed implementation procedures, EPA will review them to determine if they are consistent with the antidegradation policy held in the standards. If approved, that action would resolve the final outstanding issue from EPA's 2001 disapproval of portions of the State's 2001 standards, bringing the standards into full compliance with the Clean Water Act.

Again, I appreciate the hard work that you and others at the Bureau have put into the development of these implementation procedures. If you should have any questions concerning the comments that have been provided, please email or call me at (214) 665-6646.

Sincerely,

Russell Nelson
Regional Water Quality Standards
Coordinator

Comments on New Mexico's Proposed Antidegradation Implementation Procedures

III. Implementation

A. Point and Regulated Sources

2. Tier 2

a. Determination of Necessity

1) Publicly Owned and Private Domestic Treatment Work Discharges

5) Clarification needed:

Based on the language in 5), it is unclear if the pollutant load (measured on a parameter-by-parameter basis) will be offset by enforceable reductions by other point or nonpoint sources in the same waterbody segment? This is of particular concern since many of the State's stream segments are physical long.

In the paragraph directly after 6), the document states "Notwithstanding these de minimus activities, the Department shall conduct Tier 2 review ... when the discharge, taken together with all other activities allowed after the baseline water quality is established, would cause a reduction in the available assimilative capacity of 10 percent or more for the parameter of concern." Does this mean that if a proposed new/increased discharge could be considered de minimus by one of the six exemptions, but it is determined that cumulatively, it will cause a reduction in available assimilative capacity of 10% or more for the parameter of concern, that Tier 2 review will be conducted? As written, this paragraph could be essentially considered a catch-all provision that overrules any de minimus determination that could be made through the six exemptions?

2) Industrial Discharges

In **1)**, the provision states that: "... at least 10 percent of the total assimilative capacity for the pollutant of concern will remain unused after the discharge"

Taken literally, if the new/increased discharge will consume less than or equal to 10% of the total assimilative capacity, then it would leave at least *90%* of the total assimilative capacity, not 10%. Although it's unclear, the passage may mean that at least 10% of the *waterbody's* capacity for the pollutant of concern (i.e., the criterion) must remain unused after the discharge. Or, if referring to cumulative effects, i.e., that at least 10% of the total assimilative capacity for the pollutant of concern will remain unused after the discharge, *taken together with all other activities allowed after the baseline water quality is established*. The intent of the passage should be clarified.

2) This passage is unclear as to whether the offset of the pollutant load (measured on a parameter-by-parameter basis) be in the same waterbody segment.

United States Environmental Protection Agency
Region 6
1445 Ross Avenue, Suite 1200
Dallas, Texas 75202-2733

FAX FORM

Number of Pages, including cover sheet: 4

To: Glen Saums	From: Russell Nelson
Phone:	Phone: (214) 665-6646
Fax: 505/827-0160	Fax: (214) 665-6689

Comments due by COB today

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 6
1445 ROSS AVENUE, SUITE 1200
DALLAS, TX 75202-2733

January 12, 2004

Glenn Saums
Point Source Regulation Section Program Manager
Surface Water Quality Bureau
New Mexico Environment Department
Box 26110
Santa Fe, NM 87502.

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Sincerely,

Philip A. Crocker

for Russell Nelson
Regional Water Quality Standards Coordinator

Enclosure

Comments on New Mexico's Proposed Antidegradation Implementation Procedures

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